

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL STEPHEN KLEIN,

Petitioner,

v.

SHASTA COUNTY SUPERIOR COURT,

Respondent.

No. 2:22-cv-00776-TLN-DMC

ORDER

Petitioner, a pre-trial detainee proceeding *pro se*, brings this petition for a writ of habeas corpus under 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to Eastern District of California local rules.

On July 25, 2022, the magistrate judge filed findings and recommendations herein which were served on the parties and which contained notice that the parties may file objections within the time specified therein. (ECF No. 7.) No objections to the findings and recommendations have been filed.

Although it appears from the file that Petitioner's copy of the findings and recommendations was returned, Petitioner was properly served. It is Petitioner's responsibility to keep the Court apprised of his current address at all times. Pursuant to Local Rule 182(f), service of documents at the record address of the party is fully effective.

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1 The Court has reviewed the file and finds the findings and recommendations to be
2 supported by the record and by the magistrate judge's analysis.

3 Pursuant to Rule 11(a) of the Federal Rules Governing Section 2254 Cases, the Court has
4 considered whether to issue a certificate of appealability. Before Petitioner can appeal this
5 decision, a certificate of appealability must issue. *See* 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).
6 Where the petition is denied on the merits, a certificate of appealability may issue under 28
7 U.S.C. § 2253 "only if the applicant has made a substantial showing of the denial of a
8 constitutional right." 28 U.S.C. § 2253(c)(2). A court must either issue a certificate of
9 appealability indicating which issues satisfy the required showing or must state the reasons why
10 such a certificate should not issue. *See* Fed. R. App. P. 22(b). Where the petition is dismissed on
11 procedural grounds, a certificate of appealability "should issue if the prisoner can show: (1) 'that
12 jurists of reason would find it debatable whether the district court was correct in its procedural
13 ruling'; and (2) 'that jurists of reason would find it debatable whether the petition states a valid
14 claim of the denial of a constitutional right.'" *Morris v. Woodford*, 229 F.3d 775, 780 (9th Cir.
15 2000) (quoting *Slack v. McDaniel*, 529 U.S. 473, 120 S.Ct. 1595, 1604 (2000)). For the reasons
16 set forth in the magistrate judge's findings and recommendations, the Court finds that issuance of
17 a certificate of appealability is not warranted in this case.

18 Accordingly, IT IS HEREBY ORDERED that:

19 1. The Findings and Recommendations filed July 25, 2022 (ECF No. 7) are
20 ADOPTED in full;

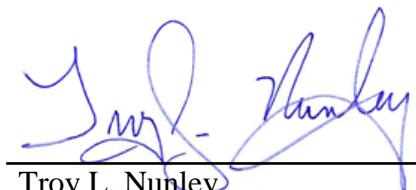
21 2. This action is DISMISSED without prejudice for lack of prosecution and failure to
22 comply with court rules and orders;

23 3. The Court declines to issue a certificate of appealability; and

24 4. The Clerk of the Court is directed to enter judgment and close this file.

25 **DATED: October 14, 2022**

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Troy L. Nunley
United States District Judge